THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.22421 OF 2005

DATED:18.10.2005

Between:

Yeleti Gopalakrishna

…Petitioner

And

The Mandal Revenue Officer

Jaggampeta, Jaggampeta Mandal

East Godavari District and others

…Respondents

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ORDER:

The petitioner is son of Yeleti Padmaraju, who was allegedly having patta in respect of the land in S.No.353 admeasuring Acs.573.83 of Mallisala Village, Jaggampeta Mandal of East Godavari District, which was part of Katravulapalli estate. The said estate was notified under A.P. (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (for short, the Act). Second respondent herein, i.e., the Settlement Officer, considered the claims of twenty-seven persons in respect of the

said land including the claim of the petitioner who is claimant No.1 before the Settlement Officer. After considering the claims and the evidence produced, second respondent by proceedings dt.17.4.2001 held that Yeleti people got title for an extent of Acs.75.00 only in S.No.353 and that other claimants have no right at all. The Settlement Officer also declared remaining extent of Acs.500.83 as "Government Porambok Hill" and ordered the same to be recorded as such in the Village and Mandal accounts. Aggrieved by the proceedings of the Settlement Officer, the petitioner filed an appeal under sub-section (2) of Section 15 of the Act before the Estates Tribunal-cum-the Court of Principal District Judge, East Godavari, third respondent herein being Appeal Suit No.54 of 2001. By order dt.2.9.2005 learned Tribunal affirmed the orders of second respondent and dismissed the appeal observing that the petitioner's family is entitled for patta only for an extent of Acs.75.00 in S.No.253 of Mallisala Village. This judgment dt.2.9.2005 is assailed in the Writ Petition praying for a Writ of Certiorari to quash the same.

Learned counsel for the petitioner, Sri E.Phani Kumar, submits that respondents 2 and 3 failed to consider the abundant evidence before the Settlement Officer showing that the petitioner's family purchased land admeasuring about Acs.90.00 in S.Nos.351 and 353 (part) over and above Acs.75.00 in S.No.353 (part). He would further urge that the Settlement Officer did not issue notice to all the persons concerned, that the relevant field measurement book consisting of three sub-divisions of S.No.353 was not produced, that the relevant revenue records like Amarakapu Lekha (lease accounts), land register and 10(1) accounts and the settlement records were not produced. He further contends that when the petitioner's family was cultivating the land in their possession, it was not permissible for respondents 2 and 3 to covert ryoti land into poramboke land.

Opposing the Writ Petition, learned Assistant Government Pleader for Revenue (General) submits that initially a patta was granted under the Act to Yeleti family in 1966 only to an extent of Acs.75.00 and that Yeleti family filed a declaration that the petitioner herein and his brothers filed declaration under A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 to claim only Acs.75.00 in S.No.353 as their holding that in 1979 the petitioner's father also claimed ryotwari passbook only for Acs.75.00 and therefore petitioner cannot now take a different stand and claim the land over and above Acs.75.00 in S.No.353 under the provisions of the Estates Abolition Act. He also brought to the notice of this Court that the petitioner's sister-in-law challenged the judgment of third respondent in W.P.No.21774 of 2005, that by order dt.17.10.2005 this Court declined to interfere with the order.

After carefully considering the various documents annexed to the Writ Petition, this Court is not able to countenance any of the submissions made by the petitioner's counsel. It is now well settled that when a Statute provides for appeal, or for revision, doctrine of merger operates. When the appellate Court or revisional Court reverses or modifies the order of the original authority, it is only the appellate/revisional order that survives for consideration as its validity and it is not permissible to assail the order of the original authority which gets merged in the order of the appellate/revisional authority. Therefore, it is not permissible for the petitioner to assail the order of the Settlement Officer in this Writ Petition by placing evidence

which was already considered by the Settlement Officer in the light of the various decisions of this Court.

It is not denied before this Court that initially Settlement Officer granted ryotwari patta in favour of petitioner's father for an extent of Acs.75.00. The same has become final and petitioner or his father did not file any appeal or revision against proceedings of the Settlement Officer in 1966. Secondly, it is not denied that petitioner and his two brothers filed declarations under land ceiling laws and they were declared to be holders of title to an extent of Acs.75.00 land in S.No.353. Be it noted, the petitioner declared an extent of Acs.20.00 whereas his two brothers Venugopala Venkata Krishna and Mohana Krishna Kondalarao declared their holding as Ac.27.50 each. The petitioner and his brothers did not even declare un-settled land over and above Acs.75.00 of land. In 1979, the petitioner's father obtained ryotwari passbook for Acs.75.00 only. These are not denied. The petitioner along with his brothers filed a declaration before the land ceiling authorities claiming only Acs.75.00 of land. Can he now turn around and claim the land over and above Acs.75.00? If the petitioner is allowed to do so, the same would amount to fraud on public authorities. This principle is well settled.

If a person for the purpose of gaining some benefit declares the status with regard to person or property, he cannot turn around and make a different declaration contrary to earlier statement. Differently put the question to be addressed is whether a person to get benefit under welfare legislation under land ceiling laws makes a statement and in subsequent proceedings resiles from the statement having got the benefit under the land ceiling laws, can be allowed to take advantage of his conduct? The answer must be negative and it should be treated as fraud on public administration.

In **Palaniappa Chettiar v. Arunasalam Chettiar** after making statement before the rubber authority that an extent of rubber estate in excess of 99 Acres was assigned to his son, in subsequent suit by the son the father claimed the entire property. Lord Denning held that in such a case where fraud on public authority is played plaintiff should be non suited to claim any relief in common law remedy. The facts in the said case square apply to this case. In **Palaniayappa's case** (supra) it was observed.

> …the father was not entitled to a retransfer of the land from the son. He had of necessity to disclose in the proceedings that he had practiced a deceit on the public administration and he could not use the process of the courts to get the best of both worlds to achieve his fraudulent purpose and also to get his property back….No Court will lend its aid to a main who 'founds his cause of action upon an immoral or an illegal act…'

In **M/s.India Cable Co. Ltd. v. Govt. of A.P.**, a Division Bench of this Court , under similar circumstances, held:

> From a consideration of the decided cases and the relevant passages in the authoritative text books, it emerges that any judgment or order of an administrative authority is a nullity if obtained by fraud and the same can be questioned before a Court. But where fraud is alleged, the Court will decline to quash unless it is satisfied that the fraud was clear and manifest and was

instrumental in procuring the order impugned, and the deception must be of a decisive character not 'neutral'.

In **Raj Kishan Pershad v. Joint Collector, R.R.Dist**, this Court considered the principle of fraud on public administration and held as under.

> Having given a statement before the Land Reforms Tribunal that about 150 Acres of land is in possession of protected tenants, who are entitled to ownership certificates under Section 38-E of the Tenancy Act, the petitioners' father or the petitioners cannot turn around before the Tenancy Tribunal and object issue of ownership certificates to the protected tenants. Obviously Raj Hari Kishan Prasad played deceit on public authorities (Land Reforms Tribunal) and he cannot be heard to say at a later point of time that the tenants are not entitled to ownership certificates under the Tenancy Act.

There is no reason to disagree with the observations made by the District Judge. The findings recorded by the learned Inams Tribunal are findings of fact and by no stretch of imagination they can be termed as perverse. Therefore, there is no warrant to interfere with the well considered judgment of the learned Inams Tribunal.

The Writ Petition is devoid of any merit and is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

18.10.2005

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